

E-Filed 2/20/14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GREGORY C. HARRISON,

No. C 13-4670 RS (PR)

Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

STEVE FRIETAS, et al.,

Defendants.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state prisoner. After review of the complaint pursuant to 28 U.S.C. § 1915A(a), the Court DISMISSES the complaint with leave to file an amended complaint on or before April 1, 2014.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and

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dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that Sonoma County Sheriff’s Deputies (1) Bunting and (2) Munson asked him to sit in a wheelchair which was not “properly braked.” Plaintiff sat in the chair, causing it to roll. He fell from the moving wheelchair and suffered injuries. These allegations fail to state a plausible claim under § 1983. At worst, the deputies’ actions were negligent, or grossly negligent, rather than intentional. Neither negligence nor gross negligence is actionable in a section 1983 action. *See Farmer v. Brennan*, 511 U.S. 825, 835–36 & n.4 (1994); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). Accordingly, these claims are DISMISSED with leave to amend.

Plaintiff also alleges that his jailors in Sonoma County have failed to provide him with his migraine medication. These allegations are not sufficient to state a plausible claim under

1 the Eighth Amendment. Plaintiff fails to name the persons responsible and the specific
2 actions they took, on what date, what words were exchanged, which doctor terminated the
3 prescription, etc. Accordingly, these claims are DISMISSED with leave to amend.

4 The complaint is DISMISSED with leave to amend. Plaintiff shall file an amended
5 complaint on or before April 1, 2014. The first amended complaint must include the caption
6 and civil case number used in this order (13-4670 RS (PR)) and the words FIRST
7 AMENDED COMPLAINT on the first page. Because an amended complaint completely
8 replaces the previous complaints, plaintiff must include in his first amended complaint all the
9 claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v.*
10 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from
11 the prior complaint by reference. Failure to file an amended complaint in accordance with
12 this order will result in dismissal of this action without further notice to plaintiff.

13 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
14 informed of any change of address by filing a separate paper with the clerk headed "Notice of
15 Change of Address." He must comply with the Court's orders in a timely fashion or ask for
16 an extension of time to do so. Failure to comply may result in the dismissal of this action
17 pursuant to Federal Rule of Civil Procedure 41(b).

18 **IT IS SO ORDERED.**

19 DATED: February 20, 2014


RICHARD SEEBORG
United States District Judge